



CITY OF SAN ANTONIO **CAPITAL IMPROVEMENTS MANAGEMENT SERVICES**

REQUEST FOR QUALIFICATIONS: ON-CALL CONSTRUCTION INSPECTION SERVICES (RFQ-CIMS12022013MG)

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded:

1. legal signatory of a high-profile contract;
2. any individual seeking a high-profile contract;
3. any owner or officer of an entity seeking a high-profile contract;
4. the spouse of any of these individuals;
5. any attorney, lobbyist or Consultant retained to assist in seeking contract.

A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the “black out” period.

**RFQ ISSUE DATE:
DECEMBER 2, 2013**

**SUBMITTAL DEADLINE:
TUESDAY, JANUARY 7, 2014 AT 3:00 P.M. LOCAL TIME**

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**CITY OF SAN ANTONIO
ON-CALL CONSTRUCTION INSPECTION SERVICES**

I. BACKGROUND

The City of San Antonio (hereafter referred to as "City") is issuing this Request for Qualifications (hereafter referred to as "RFQ") in an effort to obtain qualified, professional service-related construction inspection services (hereafter referred to as "CIS"). City may select one, more or no qualified Respondent(s), in accordance with the terms of this RFQ. All firms proposing to provide CIS for City shall have an established construction inspection staff capable of providing the in-house services indicated in the Basic Services Section herein.

City seeks Statement of Qualifications (hereafter referred to as "SOQ") from firms interested in providing the CIS services, as described in this RFQ.

II. SCOPE OF WORK

The selected firm(s) shall provide onsite construction inspection personnel available for Architectural and/or Engineering projects for the duration of project construction on an as-needed basis. The construction inspectors shall work as part of City's construction administration team and may be asked to represent City, when applicable. The construction inspector shall provide skilled, construction project quality assurance to ensure compliance with contract documents, including assisting and reporting to City's Project Manager during the construction phase, by inspecting the contractor's work for compliance with a project's construction documents.

RESPONSIBILITIES MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

1. Monitor and document job site safety.
2. Monitor and document the Storm Water Pollution Prevention Plan (hereafter referred to as "SWPPP") best management practices and posted notifications.
3. Attend pre-construction meetings and regular on-site construction meetings.
4. Coordinate with City facilities and operations when utility outages, noise control, traffic control or security are required by the work.
5. Conduct daily observation of construction work for compliance with approved contract drawings, specifications, requests for information, change order proposals, approved submittals and shop drawings.
6. Review contractor submittals and coordinate City comments (including resolving conflicts).
7. Issue observation reports, noting conditions of non-compliance, with proper references to detailed drawings and specifications sections.
8. Attend early morning, evening and/or after-hours installations requiring City representation.
9. Maintain and organize on-site project documentation.
10. Review and approve monthly contractor payment application, including survey construction progress to confirm percent complete by trades.
11. Coordinate and monitor material testing, Heating, Ventilation and Air Conditioning (hereafter referred to as "HVAC") air test and balance and other systems testing.
12. Monitor the project commissioning process, including equipment testing, functional performance tests and building integration of inter-related systems.

13. Monitor deficiency logs, to assure follow up of re-testing and system performance.
14. Assist the Project Manager in resolving construction issues.
15. Issue field directives and field orders when needed, to expedite work and document direction given to contractor.
16. Attend pre-installation meetings between the contractor and City, prior to start of roofing, glazing, pre-cast panels, curtain wall, waterproofing, foundations, structural framing and other systems, as required by specifications.
17. Monitor punch lists for above ceiling, open wall and substantial completion inspections and confirm completion of deficiencies.
18. Stay current in codes and regulations applicable to design and construction.
19. Interface with and provide support to City representatives, users operations, design professionals, contractors, utilities and regulatory agencies, to assist with resolution of construction phase conflicts.
20. Monitor project close-out procedures, including Operation and Maintenance (hereafter referred to as "O&M") manuals, as-builts, punch lists and warranty walk-through.
21. Assist the Project Manager in the one (1) year warranty process.
22. Consults with City staff and contractor's superintendents on work progress and construction problems; reviews equipment utilization data and time/cost estimates.
23. Monitors project phasing and traffic control plans and ensures compliance with approved safety standards; inspects barricades as required.
24. Completes pay sheets for actual work completed and performs construction record activities.
25. Maintains a daily activity diary of work in progress and status of completion.
26. Coordinates samples of construction materials used for project.
27. Checks on-site construction grade levels with surveying instruments or laser beam to ensure compliance with plans and specifications.
28. Meets regularly with consulting engineer to discuss project status and any project related problems.
29. Meets with citizens and community groups to discuss construction related problems.
30. Trains construction inspectors.
31. Coordinates construction or repair activities between contractors and utility companies to avoid conflict and to ensure a minimum disruption of services.
32. Interprets plans and specifications to resolve conflicts.
33. Performs other job-related duties as assigned.

It is requested that specific construction inspectors are available who have expertise, as evidenced by appropriate credentials, in the following specialties:

Underground utilities and site preparation
Concrete (structural and flatwork)
Structural Steel
HVAC
Electrical and Data
Architectural Finishes

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

Pre-Submittal Conference:	December 13, 2013, 9:30 A.M.
Deadline for Submission of Written Questions:	December 18, 2013, 4:00 P.M.
Responses Due:	January 7, 2014, 3:00 P.M.
Anticipated City Council Consideration	March 2014

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held on **Friday, December 13, 2013 at 9:30 A.M.** at the **Municipal Plaza Building, 1st Floor, Conference Room B, located at 114 West Commerce St., San Antonio, Texas 78205.** Attendance at the Pre-Submittal Conference is optional but strongly encouraged. Respondents are encouraged to prepare and submit their questions in writing three (3) calendar days in advance of the Pre-Submittal Conference, in order to expedite the proceedings.

City's responses to questions received by said date, three (3) calendar days in advance of the Pre-submittal Conference, may be distributed at the Pre-Submittal Conference and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>.

This meeting place is accessible to disabled persons. The Municipal Plaza Building is wheelchair accessible. The accessible entrance is located at 114 W. Commerce. Accessible parking spaces are located at City Hall, 100 Military Plaza. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of City shall not be binding on City.

V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City shall conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFQ. City may appoint a selection committee to perform said evaluation. Each submittal shall be analyzed to determine overall responsiveness and qualifications under the RFQ. A selection committee may recommend and/or select all, some or none of the Respondents. If City elects to conduct interviews, Respondents shall be interviewed and re-scored, based upon these same criteria or other criteria to be determined by the selection committee.

Respondent's submittal shall include the following items in the following sequence:

- A. EXECUTIVE SUMMARY – Respondent shall include a one page Executive Summary for the Statement of Qualifications (“SOQ”). The summary shall state the number of years Respondent has been in business, number of years Respondent has been in business in a local office, Respondent’s local office address (if any) and number of employees Respondent employs in its local office.
- B. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with submittal, indexed or labeled as **Tab “1”**. The Submittal Cover/Signature Sheet shall be signed by a person, or persons, authorized to bind the entity or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture such as a joint venture agreement as an attachment to their submittal.
- C. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its submittal. The checklist shall be indexed or labeled as **Tab “2”** in submittal.
- D. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form online at <http://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of the completed form and submit as **Tab “3”** in its ORIGINAL SUBMITTAL ONLY. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall complete and submit a separate form with the submittal.
- E. LITIGATION DISCLOSURE FORM (Form #4) – Complete Litigation Disclosure form and additional pages for explanation, if necessary, index or label as **Tab “4”** in submittal. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall completed and submit a separate form with the submittal.
- F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM #5) – Respondent shall submit a completed and signed Subcontractor/Supplier Utilization Commitment Form as found in RFQ REQUIRED FORMS attachment. This form shall be indexed and labeled as **Tab “5”** in the submittal.
- G. CONTRACT TEMPLATE AND GENERAL CONDITIONS (Indexed and labeled as **Tab 6**) – Respondent shall review the Contract Template and General Conditions provided as **RFQ Exhibit A and B** and provide written comments and/or concerns it may have, regarding the Contract and General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in this **Tab 6**. If no objections are submitted by Respondent, City shall conclude Respondent will sign the Contract as presented, if a contract is awarded.
- H. PROOF OF INSURABILITY (Indexed and labeled as **Tab 7**) – Respondent shall submit a copy of its current insurance certificate.
- I. STATEMENT OF QUALIFICATIONS – Respondent shall submit a narrative document addressing all evaluation criteria required under **Section II** of this RFQ. Sufficient information regarding past projects and key personnel’s experience shall be provided, to indicate Respondent’s team has met or exceeded the minimum qualifications provided in **Section II** of this RFQ in its submittal.

A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-Consultants, including Co-Respondent, Joint Venture Party or Partner (40 Points)

1. Experience: (Indexed and Labeled as “Tab 8”) – City shall consider the relevance of past experience for all parties proposed as a part of Respondent’s team. Respondent shall provide a narrative in two (2) pages or less that describes Respondent’s team’s qualifications. Include how Respondent’s proposed team has worked together on past similar projects and include the number of years working together as a team. If Sub-Consultants are part of Respondent’s team, include information on how each Sub-Consultant shall function within the team’s organization.

2. Proposed Key Personnel/Organizational Chart: (Indexed and Labeled as “Tab 9”) – Key personnel included in this section are expected to be the same personnel that will be assigned to contract if awarded. Provide a detailed organizational chart of your firm identifying key personnel who will be committed to work on the various tasks for this contract. The Proposed Key Personnel shall consist of a Licensed Consultant with a minimum of five (5) five years demonstrated experience in construction inspection services.

Label key personnel assignments as:

- Regulatory Agency and Authorities Coordinator (if any);
- Quality assurance/quality control Coordinator;
- Proposed Project Principal;
- Proposed Project Manager; and
- SubConsultants (for any services deemed necessary to fulfill the duties of this contract).

3. Resumes: (Indexed and Labeled as “Tab 10”) – Respondent shall submit one-page resumes for all key team members. Resumes should link to project sheets and also may include additional, previously completed and relevant projects not highlighted in the project sheets. Team member resumes also shall include all licenses held (if applicable), number of years licensed, location of member’s office, number of years experience in his/her proposed role and his/her experience with Respondent/team.

4. Project Sheets: (Indexed and Labeled as “Tab 11”) – Respondent’s submittal shall include a minimum of three (3) project sheets, limited to one (1) page for each project, which describe similar projects Respondent has completed within the last five (5) years. Each project sheet shall include the following:

1. Name and Description of the project;
2. Scope of the project;
3. Project Principal and note whether this person will work on this contract and his/her role planned for this contract;
4. Project Manager and note whether this person will work on this contract and his/her role planned for this contract;
5. Budget for said project;
6. Project’s proposed completion date and actual completion date (explain inconsistencies);
7. Names of Respondent’s team members who worked with on the project. Also indicate if team members are still retained by Respondent.
8. The owner’s name and the name of the representative (if different) who served as the day-to-day liaison for the project in the following format:
Name of Owner: _____
Name of Owner’s representative: _____
Representative’s Phone Number: _____
Representative’s E-mail: _____

B. Proposed Management Plan (20 points)

This information shall include Respondent's proposed organizational structure and availability of labor resources (capacity to perform) in executing Respondent's effort. Respondent shall submit information in a brief narrative plan, in two (2) pages or less indexed and labeled as "**Tab 12**," that clearly and concisely describes Respondent's organization and approach to the project, to include the following:

1. Describe Respondent's project management approach and team organization, for the provision of the services outlined in this RFQ.
2. Detail the current capacity of Respondent's key team individuals and Respondent's capabilities to complete the services outlined herein.
3. Briefly describe Respondent's experience with regard to quality control, dispute resolution and safety management.

C. Team's Experience with San Antonio Region Issues and past experience with City of San Antonio contracts (20 points)

City is interested in evaluating the firm's experience with San Antonio issues, as may be evidenced by work in San Antonio and/or the surrounding area during the past five (5) years. In narrative form using two (2) pages, briefly describe Respondent's experience (if any) in the following areas, referencing projects relating to that experience. Note: Respondent may reference projects included in project sheets under **Tab 11** herein or include other projects, but no additional project sheets should be provided for this criteria. This information shall be indexed and labeled as "**Tab 13**".

- Local area construction costs and practices;
- Local environmental community, conditions and constraints;
- Involvement in project development as it relates to public awareness in the local area;
- Firm's experience with public utilities within the San Antonio or surrounding area;
- Local site development; and
- Building code requirements.

A portion of the scoring for these criteria will be based on City's Consultants' Scorecard, other documentation and/or experience with City projects. City may consider the history of the firm in complying with project programs, schedules and budgets on previous City of San Antonio projects. **No items shall be submitted by Respondent for this criterion and Respondent shall not be penalized if it has not done work on City of San Antonio projects.** Specific items for consideration may include, but are not limited to:

- Timely completion of City projects;
- Cooperative working relationship with City;
- Prompt payment of Subcontractors at all levels;
- Compliance with other contract terms;
- Compliance with City Ordinances on substitution/addition/deletion of Subcontractors;
- Provision of contracting opportunities for S/M/WBEs;
- Compliance with City standards;
- Conformance to City budget requirements.

D. SBEDA

SBEDA Prime Contract Program – 10 pts.

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Respondents proposing at least 51% SBE participation (Prime and/or Sub-Consultant) will receive ten (10) evaluation criteria percentage points, and

M/WBE Prime Contract Program –10 pts.

Certified M/WBE firms (see *Minority/Women Business Enterprise* definition) headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Respondents proposing at least 51% M/WBE participation (Prime and/or Sub-Consultant) will receive ten (10) evaluation criteria percentage points.

No evaluation criteria percentage Points will be awarded to non-SBE or non-M/WBE Respondents through subcontracting to certified SBE or M/WBE firms.

Evaluation Criteria:	Maximum Points
A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-Consultants including Co-Respondent, Joint Venture Party or Partner	40 points
B. Proposed Management Plan	20 points
C. Team's Experience with San Antonio Region Issues and past experience with City of San Antonio contracts	20 points
D. SBEDA - SBE Prime Contract Program SBEDA - MWBE Prime Contract Program	10 points 10 Points
E. TOTAL	100 points

Respondent is expected to examine this RFQ carefully, and understand the terms and conditions for providing the services listed herein and respond completely. Failure to complete and provide any of the above-referenced documents may result in Respondent's submittal being deemed non-responsive and, therefore, disqualified from consideration.

VI. SUBMISSION INSTRUCTIONS

When submitting a Statement of Qualifications in person, visitors to City Hall must allow time for security measures. Visitors to City Hall will be required to enter through the east side of the building. The public will pass through a metal detector and x-ray machine located in the lobby. All packages, purses and carried items will be scanned during regular business hours of 7:45 a.m. to 4:30 p.m. After the public proceeds through the metal detector, they will sign in and receive a visitor's badge. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security will meet the visitor in the basement with a hand scanner.

Respondent shall submit a total of **seven (7)** Qualification Statements which shall include one **(1)** original unbound Qualification Statement, signed in ink, and **six (6)** printed copies of the submittal, as well as one **(1)** copy of the entire submittal in an Adobe PDF format on a compact disk (**CD**) in a sealed package, clearly marked on the front

of the package “**RFQ: ON-CALL CONSTRUCTION INSPECTION SERVICES**” All submittals must be received in the Office of the City Clerk **NO LATER THAN 3:00 PM TUESDAY, JANUARY 7, 2014** at the address indicated below. Any submittal received after this time shall not be considered.

Mailing Address:

City Clerk's Office, Attn: Capital Improvement Management Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Capital Improvement Management Services Department
100 Military Plaza
City Hall, 2nd Floor,
San Antonio, Texas 78205

Submittals sent by facsimile or email will not be accepted.

A response to this solicitation should be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information will be counted. Respondent shall adhere to the page limitations for each section, as stated herein. Pages which have project photos, charts and graphs shall be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages will not be counted if they do not contain submittal information. The use of recycled paper is encouraged. Three-ring binders are **NOT** permitted. With regards to other types of binding, plastic (not metal) spiral or "comb" binding is highly recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond which is sufficient to present a complete and effective submission are not required. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal shall include the sections and attachments in the sequence listed in the RFQ Section V, Submittal Document Requirements & Evaluation Criteria, and each section shall be divided by tabs and indexed as indicated in this RFQ. Failure to meet the above conditions may result in disqualification of the proposal.

A Respondent submitting a response to this RFQ correctly shall reveal, disclose and state the true and correct name of any individual, proprietorship, corporation and/or partnership, clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any. No nick-names, abbreviations (unless part of the legal title), shortened, short-hand or local "handles" shall be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.

VII. AMENDMENTS TO RFQ

Changes, amendments or written responses to questions received in compliance with **Section VIII, Restrictions on Communication** herein may be posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review said site and ascertain whether any amendments have been posted prior to Respondent's submission of a proposal. If Respondent does not have access to the Internet, Respondent shall notify City in writing, in accordance with **Section VIII, Restrictions on Communication** herein, Respondent wishes to receive copies of changes, amendments or written responses to questions by mail or facsimile.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in this RFQ. Changes to this RFQ – if any – shall be made in writing only.

VIII. RESTRICTION ON COMMUNICATIONS

A person or entity which seeks or applies for a City contract, or any other person acting on behalf of such person or entity, is prohibited from contacting City Officials and/or employees regarding such a contract after a request for proposal (RFP), request for qualification (RFQ) or other discretionary solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact with City Officials and/or employees is required by Respondent, such contact shall be done in accordance with procedures incorporated into the solicitation document. Violation of this provision by Respondent or its agent(s) may lead to disqualification of its offer from consideration. As used herein, City Official is defined as the Mayor; members of the City Council; Municipal Court Judges and Magistrates; the City Manager; Deputy City Manager; City Clerk; Deputy City Clerk; Assistant City Clerk; Assistant City Managers; Assistants to the City Manager; all City department heads and assistant department heads; Internal Auditor and Assistant Internal Auditors; Compliance Auditor; Assistant to City Council; Assistants to City Council, including contract personnel; Assistant to Mayor; Assistants to the Mayor, including contract personnel; Executive Secretaries; Public Utilities Supervisor; members of bid committees; members of the Historic and Design Review Commission; Zoning Commission; and members of any board or commission that is more than advisory in nature.

Exceptions to this restriction on communications include:

1. Respondents may ask verbal questions concerning this RFQ at the Pre-Submittal Conference.
2. Respondents without access to the internet which notify City in writing to make arrangements to receive receive copies of changes, amendments or written responses to questions by mail or facsimile.
3. Respondents may submit written questions concerning this RFQ to the Staff Contact Person listed in the address below until **4:00 PM on WEDNESDAY, DECEMBER 18, 2013**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail to:

Maria Godina, Senior Management Analyst, maria.godina@sanantonio.gov

However, questions sent by certified mail, return receipt requested, will also be accepted and should be addressed to:

Maria Godina, Senior Management Analyst
Capital Improvements Management Services
Contract Services Division
City of San Antonio
114 W. Commerce Street, Room 913, San Antonio, TX 78205

3. Respondent and/or its agent(s) are encouraged to contact Ruben A. Flores in the CIMS Small Business Office for assistance or clarification with issues specifically related to City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. Mr. Flores may be reached by telephone at (210) 207-3923 or by e-mail at ruben.a.flores@sanantonio.gov. This exception to the restriction on communication does not apply when contacting Mr. Flores. Note that there is no contact permitted to the Small Business Office regarding this solicitation following the solicitation closing date.
4. Respondent shall provide responses to informational questions asked of it by the Staff Contact Person after Respondent's response is received and opened. During interviews, if any, verbal questions and explanations shall be permitted. If interviews are conducted, Respondent shall not bring lobbyists. City reserves the right to exclude any persons from such selection committee meetings as City deems is in its best interests.

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

City reserves the right to award one, more than one, or no contract(s) in response to this RFQ.

- A. A contract, if awarded, shall be awarded to Respondent(s) whose submittal(s) is/are deemed most advantageous to City, as determined by the selection committee, upon approval by City Council.
- B. City may accept any submittal in whole or in part. If subsequent negotiations with Respondent are conducted, said negotiations shall not constitute a rejection or an alternate RFQ on the part of City. However, the final selection of a Respondent for a contract is subject to City Council approval.
- C. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFQ and to waive informalities and irregularities in any proposal received. City also reserves the right to terminate this RFQ, reissue a subsequent solicitation and/or remedy any technical errors in the RFQ process.
- D. City may require the selected Respondent(s) to execute a contract with City in substantially the same form as attached, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance, as required in this RFQ and the contract. Contract documents are not binding until approved by City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- E. This RFQ does not commit City to enter into a Contract or award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.
- F. City administers its design and construction management through an Internet-based management system. All vendors will be required to use City's management system and submit schedules.
- G. **Conflicts of Interest:** Respondent acknowledges that it is informed that the Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a SubContractor on a City contract, a partner or a parent or subsidiary business entity.
- H. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure) – Instructions and web-link to electronic form are included in Form 3 of RFQ.
- I. **Independent Contractor:** Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent Contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- J. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, entities and/or their agents, who seek to contract for the sale or purchase of property, goods or services with City, shall file a completed conflict of interest questionnaire with City Clerk not later than the seventh (7th) business day after the date the person:

- (1) begins contract discussions or negotiations with City; or
- (2) submits to City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with City. The conflict of interest questionnaire form is available from the Texas Ethics Commission by accessing either of the following web addresses:

http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm

or

<http://www.ethics.state.tx.us/forms/CIQ.pdf>.

Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of City Clerk. If mailing a completed conflict of interest questionnaire, mail to:

Office of City Clerk
P.O. Box 839966
San Antonio, TX 78283-3966

If delivering a completed conflict of interest questionnaire, deliver to:

Office of City Clerk
City Hall, 2nd floor
100 Military Plaza
San Antonio, TX 78205

Respondent shall consult its own legal advisor with questions regarding the statute or form.

- K. A submittal, upon receipt, becomes the property of City, will not be returned and becomes a public record. Any information deemed to be confidential by Respondent shall clearly be noted on the page(s) where confidential information is contained; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- L. Any cost or expense incurred by Respondent associated with the preparation of its submittal, incurred in participating in the Pre-Submittal Conference, if any, or incurred during any phase of the selection process solely shall be borne by Respondent.
- M. **Solicitation Process Review:** A Respondent desiring a review of the solicitation process must deliver a written request to the Director of CIMS within seven (7) calendar days from the date the Notice of Non-Selection was sent. When the CIMS Director receives a timely written request, the CIMS Director, or his/her designee, shall review Respondents concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the CIMS Director shall notify Respondent in writing of his/her determination.
- N. **Debriefings:** In an effort to improve solicitation responses, CIMS is making available on its web site a "Solicitation Response Tip List" that includes the top common items that "make or break" submissions. Providing this information prior to the due date of the submittal provides Respondent an opportunity to develop a better response for its solicitation submittals. As a result of this up-front effort, each Respondent is entitled to a one (1) debriefing per calendar year, following the San Antonio City Council's contract award for the subject solicitation, if Respondent:
 - (a) is not the selected Respondent; and
 - (b) Respondent has not been debriefed since January 1, 2013.

Once Respondent has been debriefed, it will not be eligible for future debriefings within that calendar year. Any Respondent meeting the above criteria that desire an individual submittal debriefing must deliver a written

request to the CIMS Contract Services Division within seven (7) calendar days from the date a Notice of Non-Selection letter was sent.

- O. City reserves the right to verify any and all information submitted by Respondent at anytime during the solicitation/evaluation process.
- P. Final approval of a selected firm(s) is subject to the action of the San Antonio City Council.
- Q. City reserves the right to contact any Respondent to negotiate a contract, if such is deemed desirable by City.

X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its response, respondent commits to comply with these requirements.

Exception Request - Respondent may, for good cause, request an Exception to the application of the SBEDA Program if Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. Respondent's Exception request fully must document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein City requires all prospective respondents and Sub-Consultants that are ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract subcontracting goals.

Certification or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Respondent to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent if Respondent attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Respondent shall not be given credit for the participation of its S/M/WBE Sub-Consultant or joint venture partner towards attainment of S/M/WBE utilization goals, and Respondent and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other Respondents.

Good Faith Efforts – documentation of Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of Respondent’s posting of a bond covering the work of SBE or M/WBE Sub-Consultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Sub-Consultants.) The appropriate form and content of Respondent’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a minority business enterprise or as a women business enterprise, and which is at least fifty-one percent (51%) owned, managed and controlled by one or more minority group members and/or women, and that is ready, willing and able to sell goods or services that are purchased by City.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a small business enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more minority group members, and that is ready, willing and able to sell goods or services that are purchased by City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – City department or authorized representative of City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Respondent and/or its Sub-Consultants and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Consultant – Consultant to whom a purchase order or contract is issued by City for purposes of providing goods or services for City. For purposes of this agreement, this term refers to Respondent.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMS), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City. For purposes of this agreement, Consultant is Respondent.

Responsible – a firm which is capable in all respects fully to perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – Respondent's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMS) – also known as the Relevant Marketplace, the geographic market area from which City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMS), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of City that primarily is responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager also is responsible for enforcement of consultant and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Sub-Consultant – any vendor or Consultant that is providing goods or services to Respondent in furtherance of Respondent's performance under a contract or purchase order with City. A copy of each binding agreement between Respondent and its Sub-Consultants shall be submitted to City prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Respondent's and/or S/M/WBE firm's performance and payment under City contracts due to City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Sub-Consultant/Supplier Utilization Plan – a binding part of this contract agreement which states Respondent's commitment for the use of Joint Venture Partners and/or Sub-Consultants/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Respondent's Joint Venture partners and Sub-Consultants/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each of Respondent's Joint Venture partner and Sub-Consultant/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of Respondent's Joint Venture partner or Sub-Consultant/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

Respondent acknowledges that the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City's SBEDA Policy & Procedure Manual are in furtherance of City's efforts at economic inclusion and, moreover, that such terms are part of Respondent's scope of work, as referenced in City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures hereby are incorporated by reference into this Agreement and are considered by the Parties to this Agreement to be material terms. Respondent voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by City. Without limitation, Respondent further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Respondent shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Respondent's utilization and payment of Sub-Consultants, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Sub-Consultants with this term;
2. Respondent shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Respondent or its Sub-Consultants or suppliers;

3. Respondent shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;
4. Respondent immediately shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Respondent's Sub-Consultant/Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Respondent to replace the Sub-Consultant/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Respondent of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Respondent immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.
6. Respondent shall retain all records of its Sub-Consultant payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in Respondent's Sub-Consultant/Supplier Utilization Plan, Respondent shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and Respondent and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Respondent acknowledges that City will not execute a contract or issue a Notice to Proceed for this project until Respondent and each of its Sub-Consultants for this project have registered and/or maintained active status in City's Centralized Vendor Registration System, and Respondent has represented to City which primary commodity codes each registered Sub-Consultant will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Respondent hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (b), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Respondent affirms that if it is presently certified as an SBE, Respondent agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 4. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Respondent affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), Respondent agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

The Sub-Consultant/Supplier Utilization Plan that Respondent is required to submit to City on a quarterly basis from the date of execution of this contract (except for the last quarter of this contract term, during which Respondent shall submit for each accepted task order) , and that contains the names of the certified S/M/WBE Sub-Consultants that were used by Respondent on this contract, the respective percentages of the total prime contract dollar value awarded and performed by each S/M/WBE Sub-Consultant, and documentation including a description of each S/M/WBE Sub-Consultant's scope of work is hereby attached and incorporated by reference into the material terms of this Agreement.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, Respondent represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Respondent shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Respondent's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Respondent shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this contract by Respondent, Respondent shall be required to submit to City accurate progress payment information with each invoice regarding each of its Sub-Consultants, including HUBZone Sub-Consultants, to ensure Respondent's reported subcontract participation is accurate. Respondent shall pay its Sub-Consultants in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of Respondent's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Respondent, and no new City contracts shall be issued to the Respondent until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, Respondent acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and

Disqualification of Respondent or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon San Antonio City Council approval).